itself."[551] The FCC has found that performance standards and measurements provide an adequate measure of whether or not a BOC is providing nondiscriminatory access to its billing functions.[552]

ii. VZ-MA's Offering

Throughout New England, Verizon's billing OSS generate over 1,800 CLEC bills and 48 million call usage records per month.[553] VZ-MA records wholesale usage in the same manner that it records usage for its own retail customers. Call usage for both retail and wholesale customers is recorded at the VZ-MA central office switches on the same data recording tape. Once the usage tape is delivered to VZ-MA's data processing center, an Automated Message Accounting ("AMA") system identifies and separates retail usage from the usage of the various CLECs. CLEC usage records are then transmitted to the Carrier Access Billing System ("CABS") for rating and creation of Exchange Message Interface ("EMI") records. The EMI records are then transferred on a daily basis to CLECs that have requested Daily Usage Feed ("DUF") files. VZ-MA also retains the CLEC usage information to develop the CLECs' wholesale bills.[554] As of June 2000, 55 Massachusetts CLECs receive

---

551 Bell Atlantic New York Order at ¶ 226; see also SBC Texas Order at ¶ 210.

552 See Bell Atlantic New York Order at ¶ 227; see also SBC Texas Order at ¶ 211.

553 VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶ 88 (VZ-MA August Supplemental OSS Aff.).

554 VZ-MA Application, Appdx. B, Vol. 32b, Tab 423, ¶¶ 125-126 (VZ-MA May OSS (continued...)

DUF files from VZ-MA. VZ-MA maintains copies of the DUF files for 45 days after transmission to the CLEC, and the actual usage records for both retail and wholesale customers are kept in VZ-MA's systems for 90 days.[555] VZ-MA notes that it does not charge CLECs for the transmission of DUF files, nor does it have any plans to do so in the future.[556]

VZ-MA reports its performance for the timeliness of both DUF files and CLEC wholesale bills through C2C standards. For DUF files, VZ-MA abides by a C2C standard of 95 percent of files delivered within four business days, and for wholesale bills, VZ-MA is required to deliver 98 percent of bills within ten business days of the bill date. VZ-MA met each of these standards for each month from April through July 2000.

VZ-MA also follows a C2C standard for the accuracy of its wholesale bills. VZ-MA measures bill accuracy as the percentage of "carrier bill charges adjusted due to billing errors."[557] VZ-MA's C2C standard for billing accuracy is parity with retail accuracy. Over the four-month period from April through July 2000, VZ-MA met its parity standard in April and June. However, VZ-MA notes that the disparities found in the May and July measures are

---

[554](...continued)
Aff.).

[555] VZ-MA Application, Appdx. B, Vol. 34a, Tab 443 (VZ-MA's Response to DTE-5-47).

[556] VZ-MA Application, Appdx. B, Vol. 34a, Tab 443 (VZ-MA's Response to DTE-5-26).

[557] VZ-MA Application, Appdx. B, Vol. 32a, Tab 423, ¶ 114 (VZ-MA May Measurements Aff.).

not the result of inaccurate billing, but rather reflect billing adjustments that resulted from settlement agreements reached between VZ-MA and various competitors.[558]

iii. Competitors' Positions and VZ-MA's Response

AT&T contends that VZ-MA's process for recording and transmitting call usage records is inadequate to meet CLECs' needs. AT&T asserts that it has received usage data that belongs to other CLECs, and that its own usage data is not always recorded on the DUF files that VZ-MA transmits. As proof of VZ-MA's inability to record and transmit accurate usage records, AT&T provided a listing of 902 test calls made during its Massachusetts production test, of which AT&T contends only 226 were accurately reported on AT&T's DUF files.[559]

In response to AT&T's claims, VZ-MA acknowledges that a typographical coding error did cause AT&T to receive usage records that should have been sent to another CLEC, but notes that this problem occurred only once and has been corrected.[560] As to AT&T's complaints about missing usage, VZ-MA states that it took a random sample of 100 of the calls that AT&T claimed were missing from the DUF files and notes that it found 99 of those calls on AT&T's DUF files. VZ-MA explains that for the one call VZ-MA could not find on the DUF files, VZ-MA also has no record of the call being made at the switch, which records all

---

558 VZ-MA Application, Appdx. A, Vol. 1, Tab 2, ¶ 98 (McLean/Wierzbicki Decl.).

559 VZ-MA Application, Appdx. B, Vol. 45, Tab 516 (AT&T's Response to DTE-ATT-1-11).

560 VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶ 91 (VZ-MA August Supplemental OSS Aff.).

call usage data.[561]

WorldCom raised complaints over Verizon's ability both to provide bills in a timely fashion and in a format that CLECs can use. WorldCom contends that Verizon does not have adequate systems in place to ensure the bill transmissions are actually received by CLECs. WorldCom states that this leads Verizon to claim that CLECs are late in paying their bills when the CLEC is unaware that it was supposed to have received a bill.[562] For example, WorldCom contends that it notified Verizon in mid-May that it had not received its May UNE bill for New York, but that Verizon did not provide a replacement bill until June 7, 2000 and then attempted to assess late payment charges.[563] WorldCom contends this problem is exacerbated by the fact that Verizon does not provide wholesale bills in electronic format. WorldCom contends that, due to the length of some wholesale bills, receiving bills in paper format only makes it nearly impossible for WorldCom, or any other CLEC, to validate the accuracy of its bills.[564]

---

561 VZ-MA Application, Appdx. B, Vol. 47, Tab 553 (VZ–MA's Response to RR-DTE-336); VZ-MA Application, Appdx. B, Vol. 46, Tab 533, at 4586-87 (Transcript of Technical Session Held 8/21/00); VZ-MA Application, Appdx. B, Vol. 46, Tab 538, at 4715-16 (Transcript of Technical Session Held 8/22/00).

562 VZ-MA Application, Appdx. B, Vol. 37, Tab 455, ¶ 135 (WorldCom Lichtenberg/Sivori Decl.).

563 VZ-MA Application, Appdx. B, Vol. 41, Tab 488 (WorldCom's Response to DTE-WCOM-6).

564 VZ-MA Application, Appdx. B, Vol. 41, Tab 488 (WorldCom's Response to DTE-
(continued...)

In response to WorldCom's claims, VZ-MA notes that WorldCom did not follow the established procedures for notifying Verizon of its missing May bill. VZ-MA states that WorldCom sent an e-mail to the Verizon billing and collections operations center on June 2, 2000 and was instructed to contact the Help Desk as is the normal procedure for billing inquiries. VZ-MA states further that WorldCom did not contact the Help Desk as instructed, but rather called directly to the systems support center on June 5, which would have been the center that researched WorldCom's claim if WorldCom had called the Help Desk. VZ-MA notes that although WorldCom did not follow the established procedures for reporting a missing bill, Verizon researched the complaint, found that there was a Network Data Mover ("NDM") transmission error, and re-sent the May bill within three hours of WorldCom's call to the systems support center.[565] With respect to WorldCom's claim that Verizon does not provide bills in a usable format, VZ-MA notes that all wholesale bills have been available in electronic format since February 2000. VZ-MA states that an industry mailing was sent to all CLECs on January 12, 2000 informing CLECs of this availability and that a second mailing was sent on January 20 notifying CLECs that a workshop would be held on March 22 to provide further information on electronic bill formats. VZ-MA notes that these industry mailings are also available on VZ-MA's wholesale web site and the electronic availability of all

---

[564](...continued)
WCOM-5).

[565] VZ-MA Application, Appdx. B, Vol. 46, Tab 533, at 4585-86 (Transcript of Technical Session Held 8/21/00).

wholesale bills is noted in the CLEC Handbook.[566]

WorldCom also raised complaints over Verizon's disconnecting of WorldCom customers in New York because those customers had outstanding balances with Verizon. WorldCom states that it has had over 300 customers disconnected by Verizon since January 2000.[567] WorldCom states that it first raised this issue with Verizon in March 1999, but Verizon did not implement a fix until May 23, 2000. WorldCom further argues that since the temporary manual fix was put in place on May 23, WorldCom has had another 25 customers disconnected by Verizon for overdue Verizon balances.[568] In support of its claims, WorldCom provided a listing of its customers who were disconnected between January 1 and July 30, 2000.[569]

VZ-MA acknowledges that WorldCom's claims about customers being disconnected for past due Verizon balances did represent a systemic problem, but asserts that the problem was resolved with a manual fix on May 23, 2000, and a permanent system fix was implemented the

---

566 VZ-MA Application, Appdx. B, Vol. 46, Tab 538, at 4678 (Transcript of Technical Session Held 8/22/00); see also CLEC Handbook, Vol. III, Section 9.3.10.

567 VZ-MA Application, Appdx. B, Vol. 37, Tab 455, ¶¶ 124-125 (WorldCom Lichtenberg/Sivori Decl.).

568 Id.

569 See VZ-MA Application, Appdx. B, Vol. 41, Tab 488 (WorldCom's Response to DTE-WCOM-4).

weekend of August 19, 2000.[570] VZ-MA notes also that of the 25 customers WorldCom asserts were disconnected after the manual fix was implemented, only two were actually disconnected after the fix date.[571]

AT&T contends that Verizon's billing help desk is unresponsive to inquiries and that billing claims go unanswered by Verizon.[572] In support of its argument, AT&T states that it has been billed for resale customers in New York even though it does not have any resale accounts. AT&T contends that it has asked Verizon to investigate these charges and credit AT&T's accounts, but that Verizon has not done so in the four months since the complaint was first raised. AT&T argues that this unresponsiveness to billing claims is evidence that Verizon's billing OSS are not provided in a nondiscriminatory manner.[573]

VZ-MA asserts that AT&T's comments regarding the responsiveness of the billing claims process are inaccurate. VZ-MA notes that it acknowledges receipt of all billing claims

---

570 VZ-MA Application, Appdx. B, Vol. 46, Tab 538, at 4698-99 (Transcript of Technical Session Held 8/22/00).

571 VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶ 95 (VZ-MA August Supplemental OSS Aff.).

572 VZ-MA Application, Appdx. B, Vol. 38, Tab 460, at 29 (AT&T July Supplemental Comments).

573 VZ-MA Application, Appdx. B, Vol. 45, Tab 516 (AT&T's Response to DTE-ATT-1-11(b)).

within 48 hours of receipt and generally resolves all claims within 30 days.[574] With respect to AT&T's specific complaint regarding the disconnection of resale billing account numbers, Verizon notes that this claim has not yet been resolved because AT&T has not yet completed its part of the resolution process. Verizon explains that both parties agreed during a meeting in May 2000 that Verizon would notify AT&T of the information surrounding the resale Billing Account Numbers, including any telephone numbers associated with the accounts and the AT&T PONs that were submitted to establish the accounts. Upon receiving this information from Verizon, AT&T was expected to submit disconnect orders for any telephone numbers associated with the Billing Account Numbers and then provide written notice to Verizon to disconnect the Billing Account Numbers.[575] VZ-MA notes that while the Billing Account Number information was sent to AT&T on May 26, AT&T has not submitted disconnect orders for any of the six telephone numbers still associated with the accounts.[576]

iv. KPMG Findings

As part of its OSS evaluation, KPMG examined 170 test points related to VZ-MA's

---

574 VZ-MA Application, Appdx. B, Vol. 42, Tab 494, ¶¶ 92-93 (VZ-MA August Supplemental OSS Aff.).

575 VZ-MA Application, Appdx. B, Vol. 46, Tab 533, at 4587 (Transcript of Technical Session Held 8/21/00); VZ-MA Application, Appdx. B, Vol. 46, Tab 538, at 4717-18 (Transcript of Technical Session Held 8/22/00).

576 Id.; see also VZ-MA Application, Appdx. B, Vol. 47, Tab 553 (VZ-MA's Response to RR-DTE-337).

billing process and found each to be satisfied.[577] KPMG reviewed the billing documentation that VZ-MA provides to CLECs, examined VZ-MA's usage collection and transmission processes, and evaluated VZ-MA's ability to provide CLECs with timely and accurate wholesale bills. As part of its evaluation, KPMG conducted a CLEC focus group and survey in order to determine the CLECs' primary concerns with VZ-MA's billing practices. Finally, as part of its Performance Metrics review, KPMG also evaluated VZ-MA's reporting of metrics related to the Billing domain.

In its review of VZ-MA's billing documentation, KPMG examined whether the documentation VZ-MA provides in its CLEC and Resale Handbooks gives CLEC representatives the necessary information to understand and use VZ-MA's billing systems. Specifically, KPMG reviewed whether the available documentation covers all relevant topics, provides accurate and complete information, and is organized in a convenient format.[578] KPMG concluded from its review that VZ-MA's billing documentation is adequate to meet CLECs' needs.

KPMG's review of VZ-MA's usage collection and transmission capabilities required KPMG "to act as a CLEC providing telecommunications services to end user customers."[579]

---

577 VZ-MA Application, Appdx. I, Vol. 1, Tab 1, at 13 (KPMG Final Report Version 1.4).

578 Id. at 408.

579 Id. at 445.

First, KPMG reviewed the process defined by VZ-MA for collecting, recording, and transmitting usage records to CLECs. KPMG's billing test team then generated usage on KPMG's test accounts and examined VZ-MA generated usage records for accuracy and completeness.[580] KPMG also analyzed the timeliness of VZ-MA's delivery of DUF files. In its Final Report, KPMG states that it found all aspects of VZ-MA's usage collection process satisfied. KPMG notes that 95.4 percent of the call usage that its test team generated with the expectation of it being reported on the DUF files was found on KPMG's DUF files.[581]

---

580 KPMG issued Exception Report #6 on February 22, 2000 stating that it was not receiving originating access usage records. KPMG noted that all of the access usage records it had received contained a terminating access indicator in the "Originating/Terminating ID" field. KPMG explained that this problem could prevent CLECs from accurately charging interexchange carriers for originating and terminating access. See VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (Exception Report #6). In response to this exception, VZ-MA stated that it differentiates between originating and terminating usage records by using separate record types rather than by using the "Originating/Terminating ID" field indicator. VZ-MA notes that the Ordering and Billing Forum ("OBF") rules allow either process. In order to eliminate the chance of misinterpretation, VZ-MA implemented code changes on March 3, 2000, to follow both available OBF processes for distinguishing originating access records from terminating access records. See VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (VZ-MA Response to Exception #6). KPMG verified VZ-MA's changes during a retest conducted from April 4 through 6, 2000, and stated in its Disposition Report for Exception #6 that VZ-MA's code changes resolved the problems cited by KPMG in the Exception Report. See VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (Disposition Report for Exception #6). KPMG also opened several Observations during its evaluation related to the accuracy of its usage records. Each of these Observations was successfully resolved by VZ-MA before the completion of KPMG's testing. Appdx. M (Observation Status Summary dated August 25, 2000).

581 VZ-MA Application, Appdx. I, Vol. 1, Tab 1, at 459 (KPMG Final Report Version 1.4).

Additionally, KPMG's test team made 730 test calls that it did not expect would generate a usage record on the DUF files, and found that VZ-MA's exclusion of those calls was correct in 99 percent of the cases.[582] KPMG further notes that it received 98.96 percent of its DUF records on time under the C2C standards.[583]

As part of its usage process review, KPMG also examined VZ-MA's procedures related to CLECs' return of usage files for correction. In this review, KPMG's test team both reviewed the defined process for returning usage files and conducted a transaction-based test of the process to examine VZ-MA's ability to follow its processes efficiently.[584] KPMG included

---

582 Id. at 460.

583 Id. at 461. KPMG issued Exception Report #1 on January 18, 2000 relating to the timeliness of its DUF files. KPMG stated that 12 DUF files expected to be received in mid-December were delivered by VZ-MA later than KPMG's expected receipt dates. See VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (Exception Report #1). VZ-MA explained that this problem was the result of the time needed to establish an electronic transmission process for KPMG's DUF files. VZ-MA states that KPMG requested electronic transmission of its DUF files on November 19, 1999, and that the establishment of electronic transmission normally takes up to two months. VZ-MA states that it expedited KPMG's request for the purposes of the test, but that VZ-MA was unable to complete the process before KPMG's original DUF test began on December 14, 1999. VZ-MA notes that it sent KPMG's initial DUF files in cartridge format, and that each of these files was delivered according to the standard time lines. See VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (VZ-MA Response to Exception #1). KPMG retested the timeliness of VZ-MA's DUF delivery in April 2000 and reported in its Disposition Report for Exception #1 that VZ-MA had met its DUF timeliness obligations. See VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (Disposition Report for Exception #1).

584 VZ-MA Application, Appdx. I, Vol. 1, Tab 1, at 431 (KPMG Final Report Version 1.4).

CLEC feedback collected from the CLEC focus group and surveys in its review. KPMG reports that VZ-MA's procedures for processing CLEC usage returns are well-defined and are carried out as defined.[585] KPMG also reports that VZ-MA adequately responded to KPMG's usage returns and followed its defined procedures in reviewing and correcting KPMG's usage files.[586]

In reviewing VZ-MA's ability to provide complete, accurate, and timely wholesale bills, KPMG conducted both a review of VZ-MA's defined processes and a validation of the bills KPMG received as part of its transaction-based evaluation.[587] As part of its evaluation of VZ-MA's defined processes, KPMG used information gathered from CLECs through the CLEC focus group and surveys.[588] In conducting the bill validation component of its review, KPMG examined a variety of bill types and bill formats to ensure that VZ-MA's billing processes were consistent across all billing areas. KPMG also requested duplicate copies of bills to ensure that information on the original and duplicate bill matched. KPMG found each test point in its process evaluation satisfied, and though there were initially some problems revealed in KPMG's bill validation examination, KPMG reports that VZ-MA fixed those

---

585 Id. at 437-443.

586 Id. at 444.

587 Id. at 463.

588 Id. at 470.

problems and KPMG's subsequent re-tests were all satisfactorily completed.[589]

As part of its overall examination of VZ-MA's OSS capacity management process, KPMG examined the capacity management safeguards and procedures of VZ-MA's CABS and CRIS billing applications. KPMG evaluated the overall ability of VZ-MA to monitor and forecast expected CLEC volumes and growth with relation to the demands such growth would have on VZ-MA's billing applications. KPMG also examined whether VZ-MA adequately applied its capacity management process to the scaling of the CABS and CRIS billing applications to meet growing CLEC needs. KPMG reports that VZ-MA satisfied each of the

---

589 Id. at 478-482. During the course of its Bill Validation testing, KPMG issued Exception Report #11. Exception Report #11 stated that KPMG was unable to verify UNE charges on its Y40 bills. KPMG stated that the information reported on its bills could not be validated against DUF call records and established rate information. See VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (Exception Report #11). VZ-MA noted in response to KPMG's Exception that various issues, including late usage reporting or delayed billing due to order activity on an account, can prevent DUF records from matching bills in a single month. VZ-MA explained that the CLEC handbook recommends that CLECs validate bills over a three-month period to eliminate these types of problems. VZ-MA also stated that it agreed with KPMG that the available billing documentation was insufficient in some areas to assist CLECs with bill validation, and VZ-MA stated it would update the necessary documentation to provide more detailed information. See VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (VZ-MA Response to Exception #11). KPMG released a Disposition Report for Exception #11 on July 24, 2000 stating that, based on VZ-MA's updated documentation, KPMG was able to verify its UNE bills successfully. KPMG also noted that VZ-MA had satisfactorily updated the information available to CLECs regarding rate elements and Unbundler Scenarios that would enable CLECs to verify more efficiently their UNE bills. See VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (Disposition Report for Exception #11).

defined billing capacity management test points.[590]

KPMG also evaluated VZ-MA's methods for recording, calculating and reporting its billing performance metrics. First, KPMG reviewed VZ-MA's data collection and filtering processes for the generation of billing metrics reports. KPMG reports that VZ-MA has adequate processes to collect, filter,[591] and maintain the integrity of its billing data for use in metrics reporting.[592] Finally, KPMG performed a validation of VZ-MA's reported billing metrics for December 1999 through February 2000, and reports that its calculations matched VZ-MA's reported performance in all cases.[593] KPMG notes that VZ-MA's calculation for the Billing Accuracy and Bill Timeliness metrics involve manual processes that could lead to human calculation errors, but states that during its metrics review it did not witness any cases of calculation error by VZ-MA's metrics processing personnel.[594]

v. Conclusions

The Department finds that VZ-MA has in place the necessary systems and personnel to

---

590 VZ-MA Application, Appdx. I, Vol. 1, Tab 1, at 491-494 (KPMG Final Report Version 1.4).

591 KPMG notes that its filtering process examination did not apply to VZ-MA's data collection process for the calculation of Bill Timeliness metrics because VZ-MA calculates these metrics using data in its rawest form. VZ-MA Application, Appdx. I, Vol. 1, Tab 1, at 656 (KPMG Final Report Version 1.4).

592 Id. at 655-656.

593 Id. at 680-681.

594 Id. at 681.

provide competitors with nondiscriminatory access to its billing Operation Support Systems. Through its performance with regard to established metrics, and a successful evaluation from the third-party tester, VZ-MA has shown that its billing systems are available in a manner that will allow an efficient competitor a meaningful opportunity to compete.

2. Combinations of UNEs

a. Standard of Review

In order to meet the requirements of checklist item 2 that it provides "nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3)," a BOC has an obligation to provide competitors with access to unbundled network elements "in a manner that allows them to combine them to provide a telecommunications service."[595] The FCC has stated previously that access to combinations of UNEs "provides a competitor with the incentive and ability to package and market services in ways that differ from the BOC's existing service offerings in order to compete in the local marketplace."[596] As such, the FCC notes that it will "examine section 271 applications to determine whether competitive carriers are able to combine network elements as required by the Act and the Commission's regulations."[597]

---

595 Bell Atlantic New York Order at ¶229.

596 Id. at ¶ 230.

597 Id.

b. UNE-Platform

i. VZ-MA's Offering

VZ-MA provides CLECs with access to combinations of local loop and local switching elements through its UNE-Platform ("UNE-P") offering. In the Phase 4-J Order of the Consolidated Arbitrations, the Department required VZ-MA to make available to CLECs existing UNE-P combinations in their combined form and prohibited VZ-MA from imposing a "glue charge" for maintaining the combination.[598] In a December 1, 1999 proposal, VZ-MA voluntarily committed to provide CLECs with UNE-P combinations where the combination of elements does not already exist in VZ-MA's network, and agreed to provide these new combinations under the same terms and conditions as existing UNE-P combinations. On January 14, 2000 VZ-MA filed the terms, rates, and conditions for its offering of new and existing UNE-P combinations in its interconnection tariff, M.D.T.E. No. 17. On May 4, 2000 the Department approved VZ-MA's UNE-P offerings.[599]

ii. Competitors' Positions

No CLEC has contested VZ-MA's position that it makes available both new and existing UNE-P combinations of local loop and local switching on a nondiscriminatory basis.

---

598 VZ-MA Application, Appdx. H, Vol. 70, Tab 612, at 9-10 (Phase 4-J Order).

599 See VZ-MA Application, Appdx. E, Vol. 18, Tab 282 (D.T.E. 98-57 Phase II Order).

c. Enhanced Extended Loop

i. VZ-MA's Offering

On September 7, 2000, as part of the D.T.E. 98-57 Phase I Order, the Department approved VZ-MA's tariff provisions related to the company's provisioning of the loop-transport combination known as the Enhanced Extended Loop ("EEL"). The Department's order required VZ-MA to allow CLECs to provision new EEL arrangements and to convert existing Special Access arrangements to EELs, if the CLEC is able to certify that it meets one of the three local usage definitions approved by the FCC in the June 2, 2000 Supplemental Order Clarification.[600] The Department further required VZ-MA's EEL offering to comply with the FCC's rules relating to commingling of EELs with Special Access arrangements, auditing of EEL arrangements, and collocation requirements on new EEL arrangements.[601]

ii. Competitors' Positions

In comments filed with the Department on July 18, 2000, WorldCom contended that VZ-MA's EEL offering was discriminatory because it did not comply with the FCC's Supplemental Order Clarification.[602] Specifically, WorldCom argued that VZ-MA's offering

600 VZ-MA Application, Appdx. K, Vol. 6, Tab 72, at 37 (D.T.E. 98-57 Phase I Order).

601 Id. at 32-33, 37-39.

602 VZ-MA Application, Appdx. B, Vol. 37, Tab 455, ¶34 (WorldCom Lichtenberg/Kinard/Drake Decl.).

did not meet the FCC's requirements with regard to the three local usage definitions.[603] However, as stated above, the Department's September 7, 2000 order in D.T.E. 98-57-Phase I resolves the disputes raised by WorldCom. No other CLEC raised any issues with VZ-MA's EEL offerings.

d. Conclusions

The Department finds that VZ-MA has met its obligation to provide CLECs with access to combinations of unbundled network elements on a nondiscriminatory basis. Specifically, the Department finds that VZ-MA's UNE-P and EEL offerings comply with both Department and FCC standards. Further, VZ-MA offers CLECs the opportunity to purchase both new and existing combinations of UNEs in VZ-MA's network under the same terms and conditions, and without the imposition of glue charges. Finally, as is discussed more fully below, VZ-MA provides combinations of UNEs to CLECs at rates that are just and reasonable.

3. Pricing of Network Elements

a. Standard of Review

Checklist item 2 of § 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with §§ 251(c)(3) and 252(d)(1)" of the Act.[604] Section 251(c)(3) requires ILECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just,

---

603 Id.

604 47 U.S.C. § 271(B)(ii).

reasonable, and nondiscriminatory."[605] Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.[606] Pursuant to this statutory mandate, the FCC has determined that prices for UNEs must be based on the total element long run incremental cost ("TELRIC") of providing those elements.[607] The FCC also promulgated Rule 51.315(b), which prohibits ILECs from separating already combined elements before providing them to competing carriers, except on request.[608] In September 1996, the U.S. Court of Appeals for the Eighth Circuit stayed and then vacated the FCC's pricing rules on jurisdictional grounds, and in 1997 it vacated Rule

---

605 47 U.S.C. § 251(c)(3).

606 47 U.S.C. § 252(d)(1).

607 Local Competition First Report and Order, 11 FCC Rcd at 15844-46; 47 C.F.R. §§ 51.501. See also, Line Sharing Order at ¶ 135 (the FCC concluded that states should set the prices for line sharing, as a new network element, in the same manner as the state sets prices for other UNEs).

608 See 47 C.F.R. § 51.315(b).

51.315(b).[609] The Supreme Court restored these rules, however, on January 25, 1999.[610]

On July 18, 2000, the U.S. Court of Appeals for the Eighth Circuit vacated and remanded the FCC's pricing rules on substantive grounds. The Eighth Circuit affirmed the FCC's use of a forward-looking, incremental cost approach, but found that the use of TELRIC "violates the plain meaning of the Act." Specifically, the Court found that TELRIC inappropriately measures "the cost some imaginary carrier would incur by providing the newest, most efficient, and least cost substitute for the actual item or element which will be furnished by the existing ILEC pursuant to Congress's mandate for sharing."[611] The Court found that the Act requires that network element prices be based on "the cost to the ILEC of providing its existing facilities and equipment either through interconnection or by providing the specifically requested existing network elements that the competitor will in fact be obtaining for use."[612]

The Department has determined that, pending a FCC ruling on remand of its pricing

---

609 Iowa Utilities Board v. FCC, 96 F. 3d 1116 (8th Cir. 1996) (per curiam) (temporarily staying the Local Competition Order until the filing of the court's order resolving the petitioners' motion for stay); Iowa Utilities Board v. FCC, 109 F.3d 418 (8th Cir. 1996) (dissolving temporary stay and granting petitioners' motion for stay, pending a final decision on the merits of the appeal), motion to vacate stay denied, 117 S. Ct. 429 (1996); Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997) (vacating the FCC's pricing and combinations rules).

610 AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999).

611 Iowa Utilities Board v. FCC, 219 F.3d 744, 750 (8th Cir. 2000).

612 Id. at 751.

rules or a higher court ruling overturning the Eighth Circuit's findings, it will maintain the status quo for UNE prices and the wholesale discount. The status quo in Massachusetts is use of the FCC's TELRIC and avoided cost methods. Therefore, the Department's evaluation of whether VZ-MA is in compliance with the checklist's pricing requirements will be based on the FCC's pricing standards, notwithstanding the vacatur and remand.

The FCC has said that: "In reviewing state pricing decisions in the context of section 271 applications, we will not reject an application because isolated factual findings by a state commission might be different from what we might have found if we were arbitrating the matter under section 252(e)(5). Rather, we will reject the application only if basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."[613]

b. Discussion

Some CLECs in the Massachusetts proceeding, notably AT&T and WorldCom, contend that the Department incorrectly applied the FCC's TELRIC methodology and, thus, VZ-MA's UNE rates are not based on TELRIC. The CLECs' arguments about the Department's TELRIC method center on two main points: (1) local switching and switch port rates are too high because they do not factor in switch vendor discounts for new switches, among other reasons; and (2) the cost of capital used to derive all UNE prices is too high. The CLECs also

613 Bell Atlantic New York Order at ¶ 244.

cite other inputs to the Department-approved TELRIC model that they contend are inappropriate.

AT&T argues that VZ-MA's switching rates in Massachusetts are too high because the Department permitted VZ-MA "to estimate costs under the assumption that it would pay for its switching investment at the prices that apply when purchasing switching upgrades . . . These prices are substantially higher than the prices [VZ-MA] pays to purchase new switches to serve forecasted demand."[614] AT&T also contends that the installation factor used to derive the rate for local switching is too high. AT&T further contends that switching rates in Massachusetts have other "problems" that are not as egregious as the two noted above.[615] WorldCom makes the same arguments as AT&T with regard to VZ-MA's UNE rates and concludes that "the prices [VZ-MA] currently charges for [UNEs] are not cost-based or 'just and reasonable' under the Telecommunications Act of 1996 . . . and, as a result, create an insurmountable barrier that has precluded the onset of real and robust local competition in Massachusetts."[616]

In terms of cost of capital, AT&T argues that the Department-approved cost of capital is "excessive, and does not comport with the FCC's TELRIC methodology." AT&T notes that the average cost of capital used in nine other states is 10.31 percent, compared to the

---

614 VZ-MA Application, Appdx. B, Vol. 38, Tab 460, at 10 (AT&T July Supplemental Comments).

615 Id. at 11-12.

616 VZ-MA Application, Appdx. B, Vol. 37, Tab 455 at 3 (WorldCom Ankum/Huffman Decl.).

Department-approved cost of capital of 12.16 percent.[617] WorldCom echoes AT&T's arguments on cost of capital.[618]

VZ-MA responded to these contentions by pointing out that the Department recently affirmed that VZ-MA's UNE rates are in compliance with the TELRIC methodology and related statutory requirements. Verizon also points to approval of an amendment to the interconnection agreement between VZ-MA and Z-Tel which, among other things, provides for a promotional discount of between 30 and 50 percent for local switching usage.[619]

c. Relevant Department Precedent

i. Background

The recurring and non-recurring UNE prices in Massachusetts were established in a series of decisions in Phase 4 of the Department's Consolidated Arbitrations docket, where the Department and its arbitrator were guided by the FCC's own directives on how to calculate TELRIC.[620] Recurring UNE rates are addressed in the following Orders: Phase 4 (December 4, 1996), Phase 4-A (February 5, 1997), Phase 4-B (May 2, 1997), Phase 4-C (June 27,

617 VZ-MA Application, Appdx. B, Vol. 38, Tab 460, at 12 (AT&T July Supplemental Comments).

618 VZ-MA Application, Appdx. B, Vol. 37, Tab 455 at 11 (WorldCom Ankum/Huffman Decl.).

619 VZ-MA Application, Appdx. B, Vol. 494, at ¶¶ 53-55 (VZ-MA August Supplemental Checklist Aff.).

620 Copies of those decisions are appended to VZ-MA's filing at Appendix H.

1997), Phase 4-D (June 27, 1997), D.T.E. 98-15 (Phase II, III) (March 19, 1999) (making UNE rates permanent), D.T.E. 98-57 (Phase II) (May 4, 2000) (establishing UNE-P rates), Phase 4-N (October 13, 1999), Phase 4-R (August 17, 2000) (setting dark fiber rates), and D.T.E. 98-57 (March 24, 2000) (setting EEL rates). Non-recurring UNE rates are addressed in the following Consolidated Arbitrations Orders: Phase 4-L (10/14/99), Phase 4-O (1/10/2000), and Phase 4-S (9/15/2000).

ii. Recurring UNE Rates

In its initial Phase 4 Order, dated December 4, 1996, the Department set interim recurring prices for UNEs using the FCC's TELRIC methodology, which at the time was stayed by the Eighth Circuit. After reviewing requests for reconsideration and clarification and compliance filings, the Department approved VZ-MA's interim UNE rates on May 2, 1997.[621] After the U.S. Supreme Court reinstated the FCC's UNE pricing rules, the Department made these interim UNE rates permanent on March 19, 1999.[622] When the Department affirmed VZ-MA's TELRIC prices after the Supreme Court decision, the Department set up a five-year cycle for evaluating UNE rates – because UNE prices were first

621 VZ-MA Application, Appdx. H, Vol. 36, Tab 250 (DTE Phase 2-B and Phase 4-B Order).

622 VZ-MA Application, Appdx. F, Vol. 8, Tab 157 (D.T.E.'s Order Granting VZ-MA's Motion to Adopt Permanent UNE Rates).

set in 1996, the next evaluation is scheduled for 2001.[623]

As noted above, the Department set VZ-MA's UNE rates according to the FCC's TELRIC methodology.[624] The Department first reviewed the model submitted by VZ-MA, and the Hatfield model, submitted by AT&T and MCI. The Department assessed whether each model was reviewable, i.e., whether it is possible to find and understand the financial and numerical relationships inherent in the model. The Department also determined whether each model provided a good representation of a reconstructed local network that will employ the most efficient technology for reasonably foreseeable capacity requirements. After deciding on the appropriate model to use, the Department determined whether the various financial inputs to the model were appropriate.[625]

The Department concluded that both models were reviewable, but that the model submitted by VZ-MA provided a better representation of a reconstructed local network that will employ the most efficient technology for reasonably foreseeable capacity requirements. To model loop plant, VZ-MA took a random sample of existing wire centers based upon their density characterization, and determined the average loop length and loop characteristics to

623 Id. at 15-16.

624 VZ-MA Application, Appdx. H, Vol. 27, Tab 162 at 5-6 (DTE's Phase 4 Order re. TELRIC).

625 Id. at 8-9.

estimate loop costs.[626] For switching equipment, VZ-MA used its existing configuration of digital switches where they exist, and replaced analog switches with digital switches in the model. For transport technology, VZ-MA assumed an all-SONET configuration. For the feeder portion of the loop, VZ-MA assumed 100 percent fiber optic in the feeder. The Department found VZ-MA's technology choices for its model to be appropriately forward-looking.[627]

As a second step, the Department reviewed the inputs to the VZ-MA model. To address the appropriate sizing of the network, the Department considered demand quantities, fill factors, and investment amounts (e.g., equipment costs).[628] The Department accepted VZ-MA's calculations to size its network, based on current demand on each network component and estimates of the amount of material investment needed to serve that demand. VZ-MA used various utilization factors for various types of plant investment, including factors for components of the network that grow incrementally in capacity in response to changes in demand, distribution cable, and fiber feeder.[629] To estimate investment amounts, VZ-MA based local loop costs on its Outside Plant Planner's Costing Tool and an engineering and construction system, and the costs from recent outside plant jobs. Switching investment were

---

626 Id. at 13-14.

627 Id. at 14-17.

628 Id. at 27.

629 Id. at 29-30.

determined by an engineering costing model, and other elements were costed using recent discounted vendor prices. The Department required VZ-MA to correct inputs for switch costs to reflect lines currently active in service plus others it demonstrated are appropriate.[630]

In terms of switching investment, WorldCom argued that VZ-MA did not use an appropriate discount off the manufacturer's listed prices for switches and other electronic equipment. WorldCom asserted that, if the network were being purchased in whole today, VZ-MA would obtain a relatively large discount from equipment suppliers. In response to this contention, the Department found "that it is speculative to assume what the manufacturers' discounts would be if a TELRIC network were being constructed today. Suppliers' discounts are a function of both supply and demand in the marketplace."[631] WorldCom subsequently filed a motion for reconsideration of this finding, and the Department found that "[VZ-MA] used its current vendor discounts in the TELRIC study, and, as described by [VZ-MA] in its reply to [WorldCom's] motion, we found these to be appropriate and supported by the record . . . [WorldCom's] motion is therefore denied."[632]

To determine the appropriate cost of capital, the Department followed FCC guidance to produce rates for monopoly elements and services that approximate what the ILEC would be

---

630 Id. at 36.

631 Id. at 37.

632 VZ-MA Application, Appdx. K, Vol. 13, Tab 16 at 9-10 (DTE's Phase 4-A Order re Motions for Reconsideration, Clarification and Recalculation).

able to charge if there were a competitive market for such offerings.[633] To accomplish that task, the Department assessed the level of risk that VZ-MA would face in its provision of UNEs in a competitive market for such offerings, which in turn was used to determine the appropriate methodology for estimating the cost of capital to be used in the TELRIC studies.[634] The Department concluded that the level of business risk that VZ-MA would face with regard to the provision of UNEs is higher than that which would apply to a monopoly bottleneck facility, a facility that, by definition, is not subject to bypass.[635] The Department viewed UNEs as a hybrid set of assets, having some of the characteristics of monopoly bottleneck facilities while also displaying some characteristics of speculative, unsecured investments.[636]

To determine the cost of equity, the Department adopted VZ-MA's discounted cash flow model which draws upon a group of industrial companies (the Standard & Poor 400), as a reasonable surrogate for comparing the likely risk of building and leasing UNEs. The Department determined that a 13.5 percent return on equity was appropriate based on the record of the proceeding.[637] The cost of debt was determined by averaging the costs of debt

---

633 VZ-MA Application, Appdx. H, Vol. 27, Tab 162 at 39 (DTE's Phase 4 Order re TELRIC).

634 Id.

635 Id. at 44.

636 Id. at 46.

637 VZ-MA Application, Appdx. K, Vol. 13, Tab 16 at 6 (DTE's Phase 4-A Order re.
(continued...)

presented by AT&T and VZ-MA, and was set at 7.8 percent.[638] The Department accepted VZ-MA's proposed capital structure based on market-based percentages of debt and equity in the capital structures of the Standard & Poor ("S&P") 400, which is 23.51 percent debt and 76.49 percent equity. The Department used the FCC projection lives in the FCC's last represcription of VZ-MA's depreciation rates.[639] The weighted average cost of capital that results from these findings is 12.16 percent.

To calculate forward-looking joint and common costs, the Department excluded retail related expenses from the TELRIC study.[640] Joint and common expense factors were presented as a ratio of expenses to investments. The Department adopted VZ-MA's calculation, which used current expenses allocated equally across investment accounts. To determine the appropriate level of expenses, the Department required VZ-MA to reduce its current expenses to account for likely efficiency improvements in the face of improved technology utilization and competitive forces. The Department used the operating expenses per line in service for ten BOC local exchange carriers as a surrogate for the level of expenses at or near the average of

[637](...continued)
Motions for Reconsideration, Clarification and Recalculation).

[638] VZ-MA Application, Appdx. H, Vol. 27, Tab 162 at 52 (DTE's Phase 4 Order re TELRIC).

[639] Id. at 56.

[640] Id. at 57.

its competitors.[641] Regarding geographic deaveraging of costs, the Department directed VZ-MA to create four density zones, (metro, urban, suburban, and rural) in recognition that the cost of UNEs are properly characterized by reference to the density, in loops per square mile, of the VZ-MA wire centers.[642]

iii. Non-recurring Charges

In several Phase 4 Orders, the Department also addressed the non-recurring charges ("NRCs") that would apply to the ordering and provisioning of UNEs. The Department reviewed TELRIC NRC models submitted by VZ-MA, and by AT&T and WorldCom. The Department ultimately adopted VZ-MA's NRC model, with certain modifications, as the appropriate model for NRCs in Massachusetts.[643]

VZ-MA's NRC model relies on three general sets of inputs: (1) a description of the tasks and people that are involved in relevant ordering and provisioning functions; (2) the identification of labor rates of those members of the VZ-MA work force involved in these tasks, which consisted of directly assigned labor rates for each job function code; and (3) an assessment of the time required to carry out the various tasks.[644] To determine the time necessary to carry out the tasks, VZ-MA carried out a work flow analysis to establish the

---

641 Id. at 60.

642 Id. at 63-64.

643 Phase 4-L Order at 31.

644 Id. at 6.

functions to complete each process; it then conducted interviews and panel discussions with subject matter experts to develop work time estimates including a minimum, maximum, and most likely time to complete each task, which were weighted and averaged. VZ-MA next validated the estimates by conducting a review process performed by a panel of subject matter experts and comparing actual work times with estimates.[645]

The Department made the following adjustments to VZ-MA's model. First, the Department required VZ-MA to reduce its fallout rate (the rate at which orders fallout of the electronic systems and must be handled manually) from 15 percent to two percent as an appropriate reflection of forward-looking technology that will be in place to process service orders.[646] Also, in order to make the network assumptions in the recurring costs TELRIC and NRC TELRIC studies consistent, the Department required VZ-MA to assume 100 percent fiber in the feeder for its NRCs.[647] The Department required VZ-MA to assume IDLC central office technology, which eliminates the need for manual cross connections on the main distribution frame, in its NRC study, to be consistent with its recurring cost study.[648] In order to compensate for possible bias inherent in the system used by VZ-MA to develop its work

---

645 Id. at 6-7.

646 Id. at 16.

647 Id. at 19.

648 VZ-MA Application, Appdx. H, Vol. 73, Tab 680 at 12 (DTE's Order re. WorldCom's Motion for Reconsideration and VZ-MA's Motion for Reconsideration and Clarification).

time estimates, the Department required VZ-MA to use its subject matter experts' minimum time estimates for each task.[649] VZ-MA submitted a new NRC cost study on February 9, 2000 in compliance with the Phase 4-L Order. This new cost study was approved by the Department with minor modification on September 15, 2000.

iv. Conclusions

The Department confirms that VZ-MA is in compliance with the terms of checklist item 2 in terms of pricing for network elements. VZ-MA's network element prices in Massachusetts unquestionably are based on the TELRIC of providing those elements. VZ-MA is charging the recurring and non-recurring rates that were approved by the Department pursuant to the TELRIC methodology. The Department has established UNE prices in Massachusetts consistent with basic TELRIC principles. One cannot read the various Department TELRIC Orders and reasonably conclude otherwise. In addition, on October 13, 2000, VZ-MA filed and the Department approved a tariff with lower rates for local switching, transport, and ports.

Some CLECs argue, however, that the Department committed errors in fact findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce. In particular, some CLECs contend that the local switching rates in Massachusetts are too high and that the cost of capital — an input to all UNE prices — is too high. The Department submits that these contentions are incorrect for the

---

649 Appdx. D at 25 (Phase 4-L Order).

following reasons.[650]

First of all, arguments that point to differences between VZ-MA's actual or historic costs and the costs used in the TELRIC analysis are misplaced. In a TELRIC environment, it is irrelevant whether the company's actual incremental costs are different from the costs assumed for a future network. For example, arguments that VZ-MA's actual cost of capital is lower than the costs assumed by the Department in calculating TELRIC[651] miss a central point of a TELRIC analysis. TELRIC is not designed to match historic or actual costs of the ILEC. Therefore, the fact that a TELRIC-derived cost is greater or less than the company's actual costs is not relevant to a determination of whether a state commission has reasonably applied TELRIC principles. The Department has addressed this point in various TELRIC Orders:

> The pricing of UNEs, per the TELRIC method, is not an exercise in cost recovery. Its purpose, as stated by the FCC, is to provide an estimate of forward-looking costs of a hypothetical telecommunications network using efficient technology to serve current and reasonably expected levels of demand and customers, assuming the same geographic distribution of central offices as are currently in place. Local Competition Order at ¶ 685; Phase 4 Order at 14-15. . . . A TELRIC proceeding is not the place to enable or ensure that an

---

650 A more thorough and detailed discussion of the Department's findings and rationale related to TELRIC inputs can be found in the following Orders: Phase 4 and Phase 4-L. VZ-MA Application, Appdx. H, Vol. 27, Tab 162 (DTE's Phase 4 Order re. TELRIC); Appdx. D (Phase 4-L Order).

651 See, e.g., VZ-MA Application, Appdx. B, Vol 38, Tab 460 at 12-14 (AT&T July Supplemental Comments) ("[VZ-MA's] risk levels have not risen, and its debt-to-equity ratio has not decreased . . . In the real world, the cost of equity capital has fallen substantially since 1996. Today, the cost of equity capital for [VZ-MA] is closer to 9.0 percent . . .Based on current data, the forward-looking weighted average cost of capital for [VZ-MA] is approximately 8.59 percent.")

incumbent local exchange carrier recovers its historic costs.[652]

Related to this point is the contention that "new" information and the fact that VZ-MA has proposed lower rates in another jurisdiction in an ongoing proceeding are evidence that a previously-decided TELRIC analysis is not consistent with TELRIC principles.[653] This argument leads to a slippery-slope. If new information in an industry with ever-changing technology and market conditions, such as telecommunications, makes a TELRIC analysis obsolete or incorrect, then a regulatory agency would be in a constant cycle of doing and re-doing a TELRIC analysis — much like the Navy starting to repaint at the bow of a ship as soon as it finishes painting the stern. The forward-looking nature of TELRIC should make it less susceptible to short-term cost anomalies, but because of the very nature of an industry with rapid changes in technological and market conditions, TELRIC rates proposed or decided in the year 2000 will differ from those proposed or decided in 1999, 1998, 1997, etc. That fact alone does not invalidate the results of an earlier analysis that must necessarily take place at a point in time, and that is why the FCC is correct to focus its evaluation of state pricing

---

652 Appdx. D at 46 (Phase 4-L Order).

653 See, e.g., arguments by WorldCom about "new" information related to manufacturers' discounts for switching investment: "Based on newly presented evidence, the NYPSC has concluded that the substantial discounts were not uniquely associated with the analog-to-digital switch replacements, but are also available for all new switch purchases. Bell Atlantic has not disputed the accuracy of this new evidence in the New York proceeding and, in fact, has admitted that it 'mis-spoke' when it previously stated that the higher discount level was limited to analog-to-digital replacements." VZ-MA Application, Appdx. B, Vol. 37, Tab 455 at 7 (WorldCom Ankum/Huffman Decl.).

decisions on the methodology used and not on the subjective judgments about appropriate inputs.[654] The Department addressed this argument about new information in its decision affirming TELRIC rates as permanent rates and setting a five-year review cycle for TELRIC:

> The CLECs argue that because certain information contained in [VZ-MA's] 1996 cost study on UNE rates may not be the most recent information available to [VZ-MA] in March, 1999, the rates in that 1996 cost study are necessarily suspect. The claim that more current data exist today is likely always to be true for any telecommunications cost study performed several years ago.[655]

The envisioned five-year review will occur in 2001, in any event. A five-year time period for a review of TELRIC and resale rates is appropriate for several reasons: (1) it roughly matches the time period used by the Department for review of VZ-MA's retail price cap plan, which is six years; (2) it is generally comparable to the historic time period between rate cases for many utilities; (3) VZ-MA notes that the five-year period is coterminous with the terms of many of its existing contracts with CLECs;[656] (4) AT&T's own witness in an earlier proceeding supported a five-year review;[657] and (5) it is a good balance between the need to update findings and the administrative burden of reviewing cost studies for both the regulators and the

---

654 See also, AT&T Corp. v. FCC, 220 F.3d 607, 617 (D.C. Cir. 2000): "If new information automatically required rejection of section 271 applications, we cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological change."

655 VZ-MA Application, Appdx. F, Vol 8, Tab 157, at 14 (DTE's Order Granting VZ-MA's Motion to Adopt Permanent UNE Rates).

656 Id.

657 Id.

participants.

Second, some of the criticisms of our TELRIC judgments are made on the basis that other state commissions came to different conclusions on similar issues.[658] This criticism is unfounded. As the FCC recognized, while TELRIC consists of "methodological principles" for setting prices, states retain flexibility to consider "local technological, environmental, regulatory, and economic conditions."[659] That recognition is consonant with the Act and with the principles of federalism that imbue the Act. And it was affirmed by the D.C. Circuit Court of Appeals in upholding the FCC's Bell Atlantic New York Order: "In other words, while state commissions use TELRIC to establish rates, application of TELRIC principles may result in different rates in different states."[660] In addition, the determination about whether a state has reasonably applied TELRIC principles or whether the results are within a range that reasonable application of TELRIC principles would produce should be based on an assessment of the totality of UNE rate decisions, and should not be based on a network-by-element analysis. The Department has established recurring and non-recurring TELRIC-based rates for

---

658 See, e.g., VZ-MA Application, Appdx. B, Vol. 38, Tab 460 at 12 (AT&T July Supplemental Comments); VZ-MA Application, Appdx. B, Vol. 37, Tab 455 at 3-4 (WorldCom Ankum/Huffman Decl.). "Nine other states in the [VZ-MA] territory have adopted costs of capital for use in setting UNE rates in accordance with TELRIC, and all have settled on rates that are substantially lower than the one selected in Massachusetts."

659 Local Competition First Report and Order, 11 FCC Rcd at 15812.

660 AT&T Corp. v. FCC, 220 F.3d 607, 615 (D.C. Cir. 2000).

a wide range of network elements, including, most recently, line sharing. Some CLECs criticize the Department-approved rates for particular network elements – a small subset of the total – but the FCC's evaluation of checklist compliance must be broader and should take into account all of the Department's UNE rate decisions.

Third, some criticisms of the Department's judgments are also based on purported differences between the conclusions reached by the Department and the conclusions underpinning the FCC's findings related to calculating universal service support.[661] Using the FCC's findings in that case as evidence of problems in setting UNE prices is exactly what the FCC twice cautioned parties not to do.[662] Also, the FCC has said explicitly that in its

---

661 See VZ-MA Application, Appdx. B, Vol. 37, Tab 455 at 8 (WorldCom Ankum/Huffman Decl); see also VZ-MA Application, Appdx. B, Vol. 38, Tab 460 at 10 (AT&T July Supplemental Comments). WorldCom also pointed out in a recent ex parte filing to the FCC that the Department-approved cost of capital of 12.6 percent is greater than the FCC's proxy cost of capital of 11.25 percent. However, CLECs have elsewhere commented that the average cost of capital in a subset of other states is 10.31 percent as support for their contention that the Massachusetts figure is wrong. Surely if a cost of capital that is 94 basis points lower than the FCC's proxy is reasonable, then a cost of capital that is 91 basis points higher than the FCC's proxy must also be reasonable.

662 "For universal service purposes, we find that using nationwide averages is appropriate. The [FCC] has not considered what type of input values, company-specific or nationwide, nor what specific input values, would be appropriate for any other purposes. The federal cost model was developed for the purpose of determining federal universal service support, and it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements. We caution parties from making any claims in other proceedings based upon the input values we adopt in this Order." FCC 99-304, CC Docket Nos. 96-45, 97-160, Tenth Report and Order at ¶ 32 (rel. November 2, 1999) (emphasis added). "We are not (continued...)

evaluation of state pricing decisions in the context of § 271 applications, it will not reject an application because isolated factual findings by a commission might be different from what it might have found if it were arbitrating the matter under § 252(e)(5).[663]

Fourth, we note that some arguments about whether Massachusetts UNE rates are in compliance with the Act's requirements are blatantly results-oriented. For example, WorldCom explicitly concedes that it chooses to contest a state's pricing determination in a § 271 proceeding not on the basis of whether the rates are TELRIC-based, which is the checklist requirement, but whether the rates produce a margin between costs and revenues sufficient for WorldCom to enter.[664] The Department does not conclude one way or another

(...continued)

persuaded by AT&T's assertion that in our Universal Service proceeding, we disallowed the cost recovery of 'augmented switches,' and that Bell Atlantic's recovery includes such cost recovery, which violates our rules. . .We specifically cautioned parties from making any claims in any other proceedings based on the inputs adopted in the Universal Service Tenth Report and Order." Bell Atlantic New York Order at ¶ 245.

663 Id. at ¶244.

664 "When Verizon applied for long-distance authority in New York, the New York commission's rates might not have been perfect, they might not have been exactly at the level that a perfect TELRIC methodology would dictate, but they allowed entry. Those rates in New York did not constitute a barrier to entry, like the rates in Massachusetts currently do. And as a result, WorldCom did not object to Verizon's application for 271 authority in New York. We would have agreed, and did agree, with the parties that the rates in place were not what we believed to be TELRIC rates, but they allowed entry, and the New York commission agreed that, yes, it was necessary for them to revisit their UNE rates." VZ-MA Application, Appdx. B, Vol 49, Tab 565 at 5599 (Transcript of Oral Argument Held 09/08/00).

whether these allegations are correct for the simple reason that such an analysis is not relevant to determining compliance with the checklist.[665] In addition to being irrelevant, such a results-oriented analysis has no place in administrative law, where evidence, precedent, and legal requirements determine whether an administrative finding is reasonable. The argument is a red herring and should be recognized and rejected as such. We are required to judge whether UNE rates are based on TELRIC — not how those TELRIC rates compare to retail rates. As we stated in our initial TELRIC order, such a comparison is only relevant to calculating the wholesale discount for resale purposes.

> The standard for pricing individual network elements and interconnection is different from the standard we employed in Phase 2 to calculate the resold services (e.g., residential local exchange service). There we determined the appropriate discount from retail prices that should be used to calculate the wholesale price for resold services by environment. Thus, the retail price was the starting point of the analysis. Here, the retail price evaluating which of the ILEC's expenses would be avoided in a wholesale environment is not relevant.

---

665 While we voice no opinion on the assertion that there is an insufficient margin between expected retail revenues and costs for the UNE-P in Massachusetts, we make the following observations on this point: (1) each party that presented a margin analysis to us, including VZ-MA, AT&T, WorldCom, and Z-Tel, ended up with different numbers on both the revenue side and cost side of the equation, which suggests that the results of a margin analysis are dependent on assumptions about a number of factors, including local usage, toll revenue, vertical service revenue, access revenue, and customer mix across geographic zones; (2) there is UNE-P competition in Massachusetts; and (3) we strongly urge the FCC to very carefully consider the ramifications of requiring a specified margin between UNE-P rates (which are cost-based) and expected retail revenues (which are usually derived from rates that are not cost-based). Such a requirement likely would preclude § 271 approval in high-cost, rural states and probably many other states as well. It is a line of argument fraught with risk to orderly implementation of the Act.

Instead, we are constructing a "bottoms-up" analysis of costs.[666]

As noted above, the Department anticipates that most of the criticism of VZ-MA's UNE rates will focus on switching rates. In terms of those rates, three other points merit comment. First, the FCC already has been asked to reject a § 271 application on the basis that the state commission improperly used the switch augmentation discount rather than the new switch discount.[667] In that case, the FCC specifically rejected that request: "We reject AT&T's allegation that Bell Atlantic's switching prices violate TELRIC principles because they fail to account for any cost savings from the steep switch discounts that an efficient carrier operating in the long run would unquestionably receive."[668] Second, on July 24, 2000, the Department approved an amendment to the interconnection agreement between VZ-MA and Z-Tel which, among other things, provides for a promotional discount of between 30 and 50 percent for local switching usage. The amendment specifically provides that the same promotional discounts shall be made available to other carriers operating in Massachusetts. VZ-MA discusses this amendment in its filing.[669] VZ-MA notes that no other carrier has

---

666 VZ-MA Appdx. H, Vol. 27, Tab 162 at 7-8 (DTE's Phase 4 Order re TELRIC).

667 See Bell Atlantic New York Order at ¶¶ 242-245.

668 Id. at ¶ 242.

669 See VZ-MA Application, Appdx. A, Tab 7 at ¶¶ 32-34 (Mudge Decl.).

opted in to the provisions of the amendment as of September 20, 2000.[670]

The negotiations between VZ-MA and Z-Tel, that led to the amendment were undertaken by both Z-Tel and VZ-MA at the request of the Department, in order to facilitate Z-Tel's market entry. It may be suggested that the Department requested that these negotiations take place based on a conclusion that VZ-MA's current switching rates are not TELRIC-compliant. This is not true. The FCC should view the promotional discounts in the VZ-MA/Z-Tel agreement as being in the same vein as the carrier-to-carrier promotions in the recent Bell Atlantic/GTE license transfer approved by the FCC — as a stimulant for competition, and not as an admission that undiscounted rates are not in compliance with applicable requirements. In approving the license transfers between Bell Atlantic and GTE, the FCC stated, "[W]e anticipate that the carrier-to-carrier promotions for residential service will spur other entities to enter these markets and establish a presence in residential markets that can be sustained after expiration of the promotional discounts."[671]

Third, as noted earlier, on October 13, 2000, VZ-MA filed and the Department approved a tariff with lower rates for switching, transport, and ports. The rates in this tariff are not identical to the switching, transport and port costs currently in effect for VZ-NY, due

---

670 Id. at ¶ 34.

671 Application of GTE Corporation and Bell Atlantic Corporation For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, FCC 00-221, CC Docket No. 98-184, Memorandum Opinion and Order, at ¶ 352 (rel. June 16, 2000).